

HUMAN SERVICES

DIVISION OF MENTAL HEALTH SERVICES

DEPARTMENT OF CORRECTIONS

Special Treatment Units

Jointly Proposed New Rules: N.J.A.C. 10:36A and 10A:35

Authorized By: Kevin M. Ryan, Commissioner, Department of Human Services,
and George W. Hayman, Acting Commissioner, Department of Corrections.

Authority: N.J.S.A 30:1-12, 30:1B-6, 30:1B-10, and 30:4-27.24 et seq.,
specifically, 30:4-27.34d. and, *R. M. v. The Northern Regional Unit*, 367 N.J. Super. 229,
842 A. 2d 308 (Spp. DW. 2004)

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2006-153

Submit written comments by July 14, 2006 to:

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The joint proposal of the agencies follows:

Summary

In accordance with the statutory mandate at N.J.S.A. 30:4-27.34d, the Commissioners of the Department of Human Services (DHS) and the Department of Corrections (DOC), in consultation with the Office of the Attorney General, hereby jointly propose identical new rules for DHS at N.J.A.C. 10:36A (cited first in the proposed new rules) and for DOC at N.J.A.C. 10A:35 (cited second and in parentheses in the proposed new rules). These new rules delineate the rights, rules of conduct and other provisions applicable to persons subject to involuntary civil commitment under the Sexually Violent Predator Act (SVPA) N.J.S.A. 30:4-27.24 et seq.

These DHS and DOC proposed new rules shall apply to residents at secure facilities operated by the DOC for the custody, care, control, and treatment of residents involuntarily civilly committed under the SVPA, as well as to those individuals temporarily involuntarily civilly committed under the Act. These rules are necessary to provide clear guidance to residents, staff, volunteers and visitors, and to ensure the safety of the DOC staff, DHS staff, treatment providers, general public, and residents.

In 1998, the Legislature enacted the New Jersey Sexually Violent Predator Act, P.L. 1998, c.71 (N.J.S.A.30:4-27.24 et seq.) to establish a civil procedure for the involuntary commitment of sexually violent predators. Recognizing the nature of the mental conditions, abnormalities or personality disorders that make a person highly likely to engage in acts of sexual violence and the dangers these predators pose to those around them, the law authorized the civil commitment of such individuals in a secure custodial environment separate from prisoners and persons with mental illness.

The DHS, through the Division of Mental Health (DMHS), provides, or arranges for the provision of, sex offender treatment services at these facilities. Treatment services in a Special Treatment Unit (STU) are designed to meet the unique psychiatric, psychological, social and rehabilitative needs of this SVP population, while also protecting public safety. The goal of treatment services is the attainment of healthy psychological and social functioning of residents in all areas, with the ultimate

goal of gradual reintegration into society, contingent upon supervision and support services.

As the Legislature has noted, having a separate facility for the custody, care, control and treatment of these sexually violent predators presents certain unique concerns directly related to the particular needs, specific characteristics and distinct treatment protocols associated with these residents. One of the associated concerns is the security and safety of residents, treatment staff, custody staff and all others in and about these facilities. Therefore, these rules must reflect consideration of the rights afforded all consumers of mental health services under section 10 of P.L. 1965, c.59 (N.J.S.A.30:4-24.2); however, the rules are also shaped by the particular needs, specific characteristics and distinct treatment protocols associated with the custody, care, control, and treatment of this SVP population.

The Legislature directed that these rules take into consideration the rights afforded to patients receiving treatment in psychiatric facilities pursuant to N.J.S.A. 30:4-24.2, Rights of patients; however, the Legislature also directed that these rules shall specifically address the differing needs and specific characteristics of, and treatment protocols related to, sexually violent predators. In developing the rules, the Commissioners of the Department of Human Services and the Department of Corrections have given due regard to security concerns and safety of the residents, treatment staff, custody staff and others in and about the facilities. Any variations in rights are necessary to comply with the direction of the Legislature and to address the distinct clinical issues and safety concerns presented by the SVP population. The proposed new rules also set forth procedures for the denial of some of these rights, when justified by clinical or security concerns.

Following is a summary of each provision of the proposed new rules:

Subchapter 1, General Provisions, sets forth rules relative to the authority, purpose, scope, definitions used throughout the rule text, internal management policies and procedures and the Residents' Guide to the Special Treatment Unit (see N.J.A.C. 10:36A-1.1 through 1.6 (10A:35-1.1 through 1.6)).

Subchapter 2, Rights of Residents, establishes general provisions regarding the rights of residents.

N.J.A.C. 10:36A-2.1 (10A:35-2.1) establishes several general provisions regarding the rights of residents to include, subject to the SVPA, a resident shall not be deprived of a civil right solely by reason of receiving treatment under the provisions of the SVPA except those rights related to providing a safe, secure facility or any appropriate concern. Provisions relative to a notice of rights being posted in the STU and given to every resident are also included within this section.

N.J.A.C. 10:36A-2.2 (10A:35-2.2) sets forth rights not subject to denial and N.J.A.C. 10:36A-2.3 (10A:35-2.3) sets forth rights that are subject to denial. These provisions follow, or are modified from, the applicable provisions of the “rights of patients” at N.J.S.A. 30:4-24.2.

N.J.A.C. 10:36A-2.3 (10A:35-2.3) delineates the rights of residents which may be curtailed, suspended or denied in accordance with internal management procedures and the procedures set forth at N.J.A.C. 10:36A-2.4 (10A:35-2.4) when DHS staff determines that such restrictions are consistent with the resident’s therapeutic goals or when DOC staff determines that such restrictions are necessary for safety concerns. Some of these rights are drawn from the “rights of patients” at N.J.S.A. 30:4-24.2(e) and some of these rights are a modification thereof.

N.J.A.C. 10:36A-2.4, 2.5 and 2.6 (10A:35-2.4, 2.5 and 2.6) set forth the procedures that must be followed by DHS treatment and DOC staff when a resident’s right is denied.

N.J.A.C. 10:36A-2.4 (10A:35-2.4) establishes that the denial of any right listed in N.J.A.C. 10:36A-2.3 (10A:35-2.3) is effective upon approval of the DMHS Clinical Director or designee and/or the DOC Facility Administrator or designee for no longer than 30 days, unless extended under the procedures set forth. Additionally, rules set forth that the DMHS Clinical Director or designee and/or the DOC Facility Administrator or designee shall document the reason for the denial and shall provide the reason to the resident.

N.J.A.C. 10:36A-2.5 (10A:35-2.5) states that the DMHS Clinical Director or designee may continue the denial for an additional 30 days and, where appropriate, may consult with the DOC Administrator or designee on this issue. Provisions also require a written statement indicating the

detailed reasons for the continuation of the denial of the right(s) from the DMHS Clinical Director or the DOC Administrator (or their designees) and the filing of same.

N.J.A.C. 10:36A-2.6 (10A:35-2.6) establishes that when the DMHS Clinical Director or the DOC Administrator or their designees believe that the denial of rights is necessary to avoid harm to the resident, other residents, staff, general public, or property, or to ensure the safe, secure and orderly operation of the facility, they may impose an emergency denial of the rights listed at N.J.A.C. 10:36A-2.3 (10A:35-2.3), effective immediately, for a period not to exceed 72 hours. Provisions require that written notice of the denial, including the reason for the denial, shall be provided to the resident and placed in the resident's files. Additionally, a review process and filing of the written notice of the review is established for each emergency denial.

Subchapter 3, Personal Property, establishes rules for permissible and non-permissible property. Personal property rules are necessary to ensure that residents are informed of the provisions associated with retaining personal property, the handling of property that is not authorized for retention or possession, and the resident's opportunity to appeal the classification of any item as non-permissible.

N.J.A.C. 10:36A-3.1 (10A:35-3.1) sets forth permissible and non-permissible property provisions that include the responsibility associated with personal property, the development of a written list of permissible personal property items and the removal of non-permissible or counter therapeutic items.

N.J.A.C. 10:36A-3.2 (10A:35-3.2) establish that property not authorized for retention or possession shall be confiscated when a resident arrives at STU reception. Additionally, the confiscation process, receipt for property confiscated, resident appeal process, decision-making authority and the disposition of the property is set forth.

Subchapter 4, Searches of Residents and Special Treatment Units by DOC Custody Staff, is set forth. The Departments of Human Services and Corrections are aware that the types of searches proposed herein constitute searches under the Fourth Amendment to the United States Constitution. However, given the diminished privacy expectations of residents in, or entering a, Special Treatment

Unit that is operationally under the jurisdiction of the Department of Corrections, in addition to the intent of both the Departments of Human Services and Corrections to maintain safe and secure and orderly operating environments, the Department of Corrections is authorized to require persons, without individualized suspicion of wrongdoing, to submit to certain searches set forth in the proposed new rules. Rules regarding the search of residents, facilities, premises and objects are necessary for the purpose of furthering therapeutic goals and for controlling and deterring the introduction and concealment of contraband that has the potential to compromise the safety, stability and security of the unit.

N.J.A.C. 10:36A-4.1 (10A:A35-4.1) requires the development and implementation of a comprehensive written search plan that governs untargeted routine and random searches of residents and units. Provisions include the review and approval of the search plan, the requirement for a Search Plan Coordinator and related authority, duties and reports.

N.J.A.C. 10:36A-4.2 (10A:35-4.2) establishes regulations that require an internal management procedure for searches of residents and facilities, and how such searches shall be conducted. Provisions set forth searches of facilities to include all residential, work, therapy, training, visit and other areas to which residents have access.

N.J.A.C. 10:36A-4.3 (10A:35-4.3) establishes regulations for the inspection of security devices in order to detect any tampering or defect. Provisions include the manner in which such inspections shall be conducted and the handling of written inspection results.

N.J.A.C. 10:36A-4.4 (10A:35-4.4) sets forth provisions for the use of scanning/testing devices when searching residents, areas and objects for security and therapeutic purposes. Regulations relative to male or female scanning/testing device operators are established.

N.J.A.C. 10:36A-4.5 (10A:35-4.5) sets forth provisions for conducting searches of residents, their possessions and all STU areas, objects and properties by canine teams that are specially trained to discover and indicate to handlers the presence of various substances and/or materials.

N.J.A.C. 10:36A-4.6 (10A:35-4.6) authorizes prohibited substance testing for security purposes and to control the introduction of contraband or to detect the presence of any substance not authorized for possession or use by a resident.

As the Departments have provided a 60-day comment period for this notice of proposal, this proposal is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Pursuant to N.J.S.A. 30:4-27.24 et seq., the proposed identical new rules are jointly promulgated by the Department of Human Services and the Department of Corrections to implement the provisions of the Sexually Violent Predator Act (SVPA). The new rules jointly proposed at N.J.A.C. 10:36A and 10A:35 represent the intention of the Department of Human Services and the Department of Corrections to comply with State law.

These rules establish the authority, purpose, scope, and definitions relative to the operation of facilities dedicated to the treatment of persons committed or temporarily committed pursuant to the SVPA. The proposed rules provide clear guidance to residents and staff by delineating the rights, rules of conduct and other provisions applicable to involuntarily civilly committed sexually violent predators. The provisions allow for the restriction of rights when such restrictions are deemed consistent with therapeutic goals, or necessary to help remove risks of harm and ensure the safety of staff, treatment providers, general public, and residents. Some individuals who are personally affected by these proposed new rules may object to these provisions.

Rules regarding personal property proposed at N.J.A.C. 10:36A-3 (10A:35-3) are necessary to ensure that residents are informed of the provisions associated with retaining personal property and handling property that is not authorized for retention. Additionally, a provision establishes an opportunity for the resident to appeal the classification of any item deemed non-permissible.

In the day-to-day management of a STU, the ability to search residents and units is necessary to

control contraband and the concealment thereof. Rules have been proposed relative to search and contraband to clearly identify the related processes, policies and procedures. Although there may be affected individuals who personally object to these rules regarding searches and contraband, the provisions are necessary to help ensure the safe, secure and orderly operation of the units.

Both the Department of Human Services and the Department of Corrections anticipate that the proposed new rules will have a positive impact on both staff and residents.

The general public will benefit from these proposed new rules because they provide for the safe, secure and therapeutic treatment of the sexually violent predators.

Economic Impact

The Departments of Human Services and Corrections have developed a staffing and operational analysis based on sexually violent predator units requiring custody staff positions and DHS and DOC civilian staff positions. Due to uncertainty as to the number of future commitments, the actual future staffing and operational costs are unknown and additional DHS and DOC staff would need to be hired as additional commitments occur. However, the cost of meeting and maintaining the requirements of the proposed new rules are met by both the Departments of Human Services and Corrections through the established budget process with funds allocated by the State.

Federal Standards Statement

The proposed new rules are promulgated under the authority of the rulemaking requirements of the Departments of Human Services and Corrections as established at N.J.S.A. 30:1B-6 and 30:1B-10. The proposed new rules are not subject to any Federal statutes, requirements or standards; therefore, a Federal standards analysis is not required.

Jobs Impact

As set forth in the Economic Impact statement, Special Treatment Units require custody staff positions and civilian staff positions as established by a staffing analysis developed by the Departments of Human Services and Corrections. Additionally, any future increase in the Special Treatment Unit resident population has the potential to respectively increase any existing staffing levels. However, the Departments of Human Services and Corrections do not anticipate that the proposed amendments will result in the loss of any jobs.

Agriculture Industry Impact

The Departments of Human Services and Corrections do not anticipate that the proposed new rules will have any impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules affect residents who have been involuntarily civilly committed to the Special Treatment Unit as sexually violent predators. The New Jersey Department of Corrections and the Department of Human Services are governmental entities responsible for the enforcement of the rules.

Smart Growth Impact

The Departments of Human Services and Corrections anticipate that the proposed new rules will have no impact on smart growth in New Jersey or in the implementation of the New Jersey State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

CHAPTER 36A (35)

SPECIAL TREATMENT UNITS

SUBCHAPTER 1. GENERAL PROVISIONS

10:36A-1.1 (10A:35-1.1) Authority

(a) The Commissioners of the Department of Human Services and the Department of Corrections hereby establish regulations regarding the custody, care, control and treatment of sexually violent predators who have been involuntarily civilly committed to a secure facility pursuant to the Sexually Violent Predator Act (SVPA) at N.J.S.A. 30:4-27.24 et seq.

(b) The Division of Mental Health Services (DMHS) in the Department of Human Services shall provide or arrange for sex offender treatment of persons committed pursuant to the SVPA.

(c) The Department of Corrections shall be responsible for the operation of any facility designated for the custody, care, control and treatment of sexually violent predators, and shall provide or arrange for the custodial and medical care of persons committed pursuant to the SVPA.

(d) Appropriate representatives of the Departments of Human Services and Corrections shall participate in an interagency oversight board to facilitate the coordination of the internal management procedures and policies of the facility.

10:36A-1.2 (10A:35-1.2) Purpose

(a) The rules in this chapter are jointly promulgated by the Department of Human Services and the Department of Corrections to implement N.J.S.A. 30:4-27.24 et seq., to establish provisions for:

1. The custody, care, control and treatment of involuntarily civilly committed sexually violent predators who are housed in a secure facility operated by the Department of Corrections, with custodial care provided or arranged for by the DOC and sex offender treatment services provided by, or arranged for by the DMHS in the Department of Human Services;
2. A secure environment for involuntarily civilly committed sexually violent predators which encourages participation in sex offender treatment;
3. The establishment of Special Treatment Unit internal management procedures and policies that include the provisions of this chapter;
4. A requirement that a Residents' Guide to the Special Treatment Unit is developed, maintained and provided to all residents;
5. The rights of residents in a secure facility for the custody, care, control and treatment of involuntarily civilly committed sexually violent predators;
6. Personal property;
7. Search of residents and facilities in order to control and deter contraband and to facilitate sex offender treatment; and
8. Testing for prohibited substances.

10:36A-1.3 (10A:35-1.3) Scope

This chapter shall be applicable to the operations of any secure facility designated for the custodial care of persons who have been involuntarily civilly committed as sexually violent predators.

10:36A-1.4 (10A:35-1.4) Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Canine search" means a search conducted by a canine team consisting of a handler(s) and a dog(s)

specially trained to discover and indicate to the handler(s) the presence of various substances and/or materials.

"Clinical staff" means employees of the Department of Human Services, Division of Mental Health Services, assigned to the Special Treatment Unit, who are members of treatment teams or who work in rehabilitation services or discipline-specific supervisory positions including, but not limited to, psychiatry, psychology and social work.

"Contraband," for the purpose of these rules, means:

1. Any item, article or material found in the possession of, or under the control of, a resident which is not authorized for retention or receipt;
2. Any item, article or material found within the unit or on its grounds which has not been issued by the unit or authorized as permissible for retention or receipt;
3. Any item, article or material found in the possession of, or under the control of, staff or visitors within the unit or on the unit grounds which is not authorized for receipt, retention or importation;
4. Any item, article or material which is authorized for receipt, retention or importation by residents, staff or visitors but which is found in an excessive amount or which has been altered from its original form. An amount shall be considered excessive if it exceeds stated unit limits or exceeds reasonable safety, security, sanitary, or space considerations; or
5. Any article which may be harmful or counter-therapeutic, or which may present a threat to the health or safety of the residents, staff or general public or to the secure and orderly operation of the unit shall be considered contraband. Items of contraband shall include, but shall not be limited to: electronic communication devices, guns and firearms of any type; ammunition; explosives; knives, tools and other implements not provided in accordance with unit regulations; hazardous or poisonous chemicals and gases; unauthorized drugs and medications; medicines dispensed or approved by the unit but not consumed or utilized in the manner prescribed; intoxicants, including, but not limited to, liquor or alcoholic beverages; pornography, inappropriate materials that are counter-therapeutic; and where

prohibited, currency and stamps.

"Custody staff" except as otherwise provided, means Custody Supervisors, Senior Correction Officers and Correction Officer Recruits who have been sworn as peace officers.

"Department of Corrections (DOC)" means the New Jersey Department of Corrections.

"Department of Human Services (DHS)" means the New Jersey Department of Human Services.

"Division of Mental Health Services (DMHS)" means the Division in the Department of Human Services responsible for providing or arranging for treatment of persons committed pursuant to the SVPA.

"DOC Administrator" means the administrator employed by the New Jersey Department of Corrections who serves as the chief executive officer of any Special Treatment Unit and who has oversight responsibilities for DOC staff.

"DMHS Clinical Director" means the administrator employed by the Department of Human Services, Division of Mental Health Services, who has oversight responsibilities for DHS/DMHS staff.

"Internal management procedures and policies" means procedures and policies issued and maintained by the DMHS Clinical Director or designee for implementation of the facility sex offender treatment program and the procedures and policies that are issued and maintained by the DOC Administrator or designee to provide specific operating procedures for the secure facility.

"Modified Activities Program (MAP)," when used in this chapter, means a behavior modification program used as a sex offender treatment intervention that limits a resident's activities to his or her room, tier, wing or program.

"Resident" means a person who has been temporarily involuntarily civilly committed or involuntarily civilly committed pursuant to N.J.S.A. 30:4-27.24 et seq. to a secure facility operated by the Department of Corrections with custodial care provided or arranged for by the Department of Corrections, and sex offender treatment services provided by, or arranged for by the DMHS in the Department of Human Services.

"Scanning/testing device" means a mechanical and/or electronic instrument used to identify or to detect certain substances and materials.

"Scanning/testing device operator" means an individual specially trained and authorized by the Department of Corrections to operate a scanning/testing device.

"Scanning/testing device search" means a search of a person or object by exposure to a mechanical and/or electronic instrument used to detect certain substances and materials.

"Sexually violent offense" means:

1. Aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to subparagraph (b) of paragraph (2) of subsection c. of N.J.S.A. 2C:13-1; criminal sexual contact; felony murder pursuant to paragraph (3) of N.J.S.A. 2C:11-3 if the underlying crime is sexual assault; an attempt to commit any of these enumerated offenses;

2. A criminal offense with substantially the same elements as any offense enumerated in paragraph 1 above, entered or imposed under the laws of the United States, this State or another state; or

3. Any offense for which the court makes a specific finding on the record that, based on the circumstances of the case, the person's offense should be considered a sexually violent offense.

"Sexually violent predator" means a person who:

1. Has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be incompetent to stand trial; and

2. Suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for custody, care, control and treatment.

"Sexually Violent Predator Act (SVPA)" means N.J.S.A. 30:4-27.24 et seq.

"Special Treatment Unit (STU)," "facility" or "unit" means a secure facility for involuntarily civilly committed residents, operated by the Department of Corrections, with custodial care provided or

arranged for by the Department of Corrections, and sex offender treatment services provided by, or arranged for by the DMHS in the Department of Human Services.

"Temporary Close Custody (TCC)" means the removal of a resident from the general population, or other assigned status, with restriction to a room in a designated area for a period not to exceed 72 hours.

10:36A-1.5 (10A:35-1.5) Special Treatment Unit internal management policies and procedures

The DMHS Clinical Director and the DOC Administrator, or their designees, shall develop and maintain written policies and procedures for the operation of the program and facility, consistent with this chapter.

10:36A-1.6 (10A:35-1.6) Residents' Guide to the Special Treatment Unit

A Special Treatment Unit Residents' Guide shall be maintained and provided to all residents.

SUBCHAPTER 2. RIGHTS OF RESIDENTS

10:36A-2.1 (10A:35-2.1) Rights of residents

(a) Subject to the Sexually Violent Predator Act (SVPA), and any other provisions of law and the Constitution of New Jersey and the United States, a resident shall not be deprived of a civil right solely by reason of receiving treatment under the provisions of the SVPA. Treatment shall not modify or vary legal or civil rights including but not limited to, the right to register for and to vote in elections, or rights relating to the granting, forfeiture, or denial of a license, permit, privilege, or benefit pursuant to any law, except those rights related to providing a safe, secure facility or any appropriate concern.

(b) Every resident shall be entitled to all rights set forth in the SVPA and shall retain all rights not specifically denied in the SVPA.

1. A notice of the rights set forth in this subchapter shall be prominently posted in the STU and

shall be given to every resident within five business days of the resident's admission;

2. The notice shall be in writing and in reasonably simple and understandable language;

3. For illiterate residents, residents not sufficiently conversant with the English language, and residents otherwise unable to read due to a physical/medical inability, an alternative method of communication, shall be provided explaining the notice of rights; and

4. The resident shall acknowledge receipt of this notice in writing and a staff member shall place a copy of this written receipt in the resident's files maintained by the Departments of Human Services and Corrections. If the resident refuses to acknowledge receipt of the notice, the person delivering the notice shall make a notation of the refusal on the receipt and a copy of the receipt shall be placed in the resident's files maintained by the Departments of Human Services and Corrections.

10:36A-2.2 (10A:35-2.2) Resident rights not subject to denial

(a) Each resident shall have the following rights which shall not be denied under any circumstances:

1. The right to be free from unnecessary or excessive medication in accordance with pertinent statutes, standards of medical practice acceptable within the professional community, and applicable internal management procedures and/or policies;

2. The right not to be subjected to experimental research or treatment except as provided by court order, consent decree, or other legal process and with the expressed and informed consent of the resident after consultation with counsel or interested party of the resident's choice. Such consent shall be made in writing, a copy of which shall be placed in the appropriate file of the resident maintained by the Departments of Human Services and Corrections;

3. The right to confidential communications with the resident's attorney or the courts. The right to confidential communications with the resident's physician, except to the extent that communications are relevant to proceedings under the SVPA as determined by the court;

4. The right to be free from corporal punishment; and
5. The right to receive essential medical treatment as recommended by the health care provider.

10:36A-2.3 (10A:35-2.3) Resident rights subject to denial

(a) Each resident shall have the following rights, which may be curtailed, suspended or denied in accordance with internal management procedures and policies, and pursuant to N.J.A.C. 10:36A-2.4 (10A:35-2.4) when Department of Human Services clinical staff determines that such restrictions are consistent with the therapeutic goals of the resident, or when Department of Corrections staff determines that such restrictions are necessary to protect the resident, other residents, staff, general public, or property, or to ensure the safe, secure and orderly operation of the facility, or for other good cause:

1. The right to privacy except as established at N.J.A.C. 10:36A-4 (10A:35-4) and the right to dignity.
2. The right to be free from unnecessary physical restraint; except for those situations where a resident has caused substantial property damage, has attempted or shown through threatening gestures or behaviors a substantial or imminent threat to harm self or others, or when other good cause exists indicating that less restrictive means of restraint are not feasible as determined by the Department of Corrections. In such an emergent situation, a resident may be physically restrained or placed in TCC or MAP status as defined in this chapter;
3. The right to the least restrictive conditions within the secure facility necessary to achieve the purposes of sex offender treatment that is recommended by the treatment team and necessary to ensure the safety of the residents, staff and the general public;
4. The right to wear his or her own clothes within the facility, pursuant to internal management procedures and/or policies applicable to all residents and based on safety and security concerns; to keep and use permissible personal property; and to have access to, and be allowed to spend a reasonable sum of his or her money for commissary or other purchases;

5. The right to have individual space for storage use;
6. The right to see visitors during regularly scheduled visit periods;
7. The right to have reasonable access to, and use of, telephones to have unmonitored conversations;
8. The right to have access to the purchase of letter writing materials, including stamps;
9. The right to send and receive correspondence;
10. The right to participate in physical exercise on a regularly scheduled basis;
11. The right to be outdoors at regular and frequent intervals, in the absence of medical considerations; and
12. The right to freedom of religious affiliation and voluntary religious worship; however, reasonable restrictions based upon the safe, secure, orderly operation of the facility may be imposed.

10:36A-2.4 (10A:35-2.4) Denial of a resident right

(a) The denial of a right established at N.J.A.C. 10:36A-2.3 (10A:35-2.3) shall be effective upon the approval of the DMHS Clinical Director or designee and/or the DOC Administrator or designee for a period not to exceed 30 calendar days, unless extended pursuant to N.J.A.C. 10:36A-2.5 (10A:35-2.5).

(b) The reason for the denial of the right shall be documented by the DMHS Clinical Director or designee and/or by the DOC Administrator or designee. The reason shall be provided to the resident, and entered in the resident's files maintained by the Departments of Human Services and Corrections as soon as practicable, within 72 hours after the denial is implemented.

10:36A-2.5 (10A:35-2.5) Continuation of the denial of a resident right

(a) The denial of any right may be continued for additional 30 calendar day periods when reviewed and approved by the DMHS Clinical Director or designee. The DOC Administrator or designee may

be consulted as deemed appropriate by the clinical Director or designee.

(b) A written statement indicating the detailed reason(s) for the continuation of the denial of the right(s) shall be provided to the resident by the DMHS Clinical Director or DOC Administrator or their designees, and entered in the resident's files maintained by the Departments of Human Services and Corrections as soon as practicable.

10:36A-2.6 (10A:35-2.6) Emergency denial of a resident right

(a) Resident rights established at N.J.A.C. 10:36A-2.3 (10A:35-2.3) may be denied in an emergency situation for a period not to exceed 72 hours in any instance in which the DMHS Clinical Director or DOC Administrator or their designees believe it is imperative to deny any right to avoid physical harm to the resident, other residents, staff, general public, property or to ensure the safe, secure and orderly operation of the facility.

(b) The emergency denial of a resident right shall take effect immediately. A written notice of the denial, which shall include an explanation of the reason for the denial, shall be given to the resident and placed in the resident's files maintained by the Departments of Human Services and Corrections as soon as practicable.

(c) The DMHS Clinical Director and DOC Administrator or their designees shall review each emergency denial of a right within 24 hours of the decision and shall place a written notice of the review in the resident's files maintained by the Departments of Human Services and Corrections within 24 hours of the review, excluding weekends and holidays.

SUBCHAPTER 3. PERSONAL PROPERTY

10:36A-3.1 (10A:35-3.1) Permissible and non-permissible property

(a) The resident shall be responsible for his or her own personal property and shall keep personal

property at his or her own risk.

(b) The unit DOC Administrator or designee shall develop a written list of permissible personal property items and the number of permissible personal property items which may be retained in the possession of the resident.

(c) In the event an item is determined to be non-permissible or counter therapeutic, that item shall be removed from the possession of the resident and handled in accordance with resident personal property internal management procedures. For purposes of this section non-permissible property means property that does not appear on the permissible property list, or exceeds the amount indicated on that list.

10:36A-3.2 (10A:35-3.2) Handling of personal property confiscated within a Special Treatment Unit

(a) When a resident arrives at a Special Treatment Unit reception area with items of personal property not authorized for retention or possession, the items shall be confiscated.

(b) The staff member making the confiscation shall give the resident an itemized, signed and dated receipt for the property confiscated, and shall notify the resident that such items are not permitted, and that the resident has three business days, from the date of the confiscation, to appeal the classification of any or all items as non-permissible by submitting a grievance to the individual designated to process grievances, with the DOC Administrator or DMHS Clinical Director or their designees having final decision-making authority.

1. If it is determined that any or all of the items confiscated are permissible, they shall be returned to the resident.

2. If it is determined that any item is not permitted, the resident shall be given three business days to indicate which of the following means of disposal should be used with respect to the property. The property shall be:

- i. Mailed to a designated relative or friend of the resident at the resident's expense;

- ii. Given to a visitor for disposal;
- iii. Donated by the resident to a charitable organization at the resident's expense; or
- iv. Destroyed at the resident's request.

3. If the resident fails to indicate the desired disposition, the property shall be disposed of at the option of the DOC Administrator or DMHS Clinical Director.

SUBCHAPTER 4. SEARCHES OF RESIDENTS AND SPECIAL TREATMENT UNITS BY DOC CUSTODY STAFF

10:36A-4.1 (10A:35-4.1) Search plan

(a) Residents and facilities may be searched as provided by this subchapter for the purpose of controlling and deterring the introduction and concealment of contraband and to further the therapeutic goals.

(b) The facility shall develop and implement a comprehensive written search plan governing untargeted routine and random searches of residents and units. Each search plan shall be submitted to the Office of the Commissioner or designee, Department of Corrections for review and approval on or before February 15 of each year.

(c) The facility shall appoint a custody staff member, of a rank no less than Captain, as unit Search Plan Coordinator.

(d) The facility Search Plan Coordinator shall submit monthly data to the DOC Administrator or designee and the Indicator Report Coordinator. The data shall include, but not be limited to, information regarding searches completed and contraband recovered. The reported data shall be included in the Monthly Indicator Report.

10:36A-4.2 (10A:35-4.2) Searches of residents and facilities

(a) All facility residential, work, therapy, training, visit and other areas to which residents have access shall be searched thoroughly for contraband on a routine and random basis. Searches shall be unannounced and irregularly timed, and may be limited to a specific building or area.

(b) Procedures to be utilized in conducting searches consistent with this subchapter shall be set forth in an internal management procedure prepared by the DOC Administrator or designee to be promulgated pursuant to the search plan required by N.J.A.C. 10:36A-4.1 (10A:35-4.1). Such procedures shall provide that a resident may be excluded from entry into an area being searched to facilitate the safe and effective performance of the search.

(c) Searches of residents shall be conducted in a professional and dignified manner, with maximum courtesy and respect for the resident's person, and under sanitary conditions.

10:36A-4.3 (10A:35-4.3) Inspection of security devices

(a) All bars and sashes, locks, windows, doors, lock boxes and other security devices shall be inspected daily to detect any tampering or defect.

(b) Emergency keys shall be checked at least once every three months to determine that they work properly.

(c) Inspection of security devices shall be conducted continuously and systematically but scheduled to avoid an observable or predictable routine. The results of all inspections shall be submitted in writing to the shift commander for review by the Director of Custody Operations.

10:36A-4.4 (10A:35-4.4) Use of scanning/testing devices

(a) Searches of residents, areas and objects by the use of scanning/testing devices may be conducted by custody staff routinely and randomly where necessary for security and therapeutic purposes. This may be, but is not limited to, a walk-through device or a handheld device which is passed over the fully clothed body of the resident.

(b) Scanning/testing device searches of residents may be conducted by male or female custody staff members or scanning/testing device operators.

10:36A-4.5 (10A:35-4.5) Canine searches

All residents and their possessions, and all Special Treatment Unit areas, objects and properties are subject to routine and random searches by canine teams, specially trained to discover and indicate to the handler(s) the presence of various substances and/or materials.

10:36A-4.6 (10A:35-4.6) Prohibited substance testing

To control the introduction of contraband or to detect the presence of any substance not authorized for possession or use by the resident, testing for prohibited substances may be conducted for security purposes.